



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2011-0495; FRL-9906-61-Region 6]

Approval and Promulgation of Implementation Plans; Texas; Revisions for Permitting of Particulate Matter with Diameters Less Than or Equal to 2.5 Micrometers (PM_{2.5})

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the Texas State Implementation Plan (SIP) submitted by the Texas Commission on Environmental Quality (TCEQ) on May 19, 2011. The May 19, 2011, SIP submission adopts revisions to the Texas General Air Quality Definitions and Permits by Rule (PBR) program consistent with certain federal rules implementing the 1997 and 2006 PM_{2.5} National Ambient Air Quality Standard (NAAQS). EPA is also proposing to find that the Texas Prevention of Significant Deterioration (PSD) New Source Review (NSR) SIP meets all EPA PM_{2.5} PSD SIP rules. These rules include permitting components such as the PM_{2.5} precursors of sulfur dioxide and nitrogen oxides, condensables, significant emissions rates (SER), and increment. EPA is proposing these actions under section 110 and part C of the Clean Air Act (CAA or the Act).

DATES: Comments must be received on or before [insert date 30 days after publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-OAR-2011-0495, by one of the following methods:

- *www.regulations.gov*. Follow the online instructions for submitting comments.
- E-mail: Ms. Adina Wiley at *wiley.adina@epa.gov*.
- Mail or Delivery: Ms. Adina Wiley, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2011-0495. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through <http://www.regulations.gov> or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The <http://www.regulations.gov> website is an “anonymous access” system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of

any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment with the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley (6PD-R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD-R), Suite 1200, Dallas, TX 75202-2733. The telephone number is (214) 665-2115. Ms. Wiley can also be reached via electronic mail at wiley.adina@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Background for Our Proposed Action

The Act at section 110(a)(2)(C) requires State Implementation Plans (SIPs) to include preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants. These requirements apply in attainment and nonattainment areas and cover both major and minor new sources and modifications. Collectively, these SIP requirements are referred to as the New Source Review (NSR) SIP. The CAA NSR SIP program is composed of three separate programs: prevention of significant deterioration (PSD), nonattainment (NNSR), and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the NAAQS – “attainment areas” – as well as areas where there is insufficient information to determine if the area meets the NAAQS – “unclassifiable areas.” The NNSR SIP program is established in part D of title I of the CAA and applies in areas that are designated as “nonattainment areas” because they are not in attainment of the NAAQS. The Minor NSR SIP program addresses construction or modification activities for sources that will not emit, or have the potential to emit, above certain thresholds and thus do not qualify as “major.” Minor NSR applies regardless of the designation of the area in which a source is located. EPA regulations governing the criteria that states must satisfy for EPA approval of the NSR programs as part of the SIP are contained in 40 CFR sections 51.160 - 51.166.

When EPA originally approved TCEQ’s PSD SIP on June 24, 1992, this action included

the TCEQ's authority to require PSD permits for emissions of ozone, particulate matter, sulfur oxides, carbon monoxide, nitrogen dioxides, and lead (57 FR 28093). TCEQ's Minor NSR SIP also requires permits for these emissions. Under Texas state law, once the TCEQ has the authority to require the permitting of a NAAQS for a particular pollutant, it has the authority to require the permitting of any new or revised version of that NAAQS for that pollutant. For instance, the ozone NAAQS was first promulgated by EPA in 1971 with a one-hour averaging time. The ozone NAAQS was revised in 1979 with the same averaging time but in a different form, and then revised again in 1997 and 2008 with an 8-hour averaging time and different form. Regardless of later revisions by EPA, as of the 1992 approval of TCEQ's PSD SIP, TCEQ had the state authority to require permitting of these different versions of the ozone NAAQS upon the effective date of each new or revised NAAQS. The Texas PSD SIP and the Texas Minor NSR SIP cover these various versions of the same pollutant, ozone. This continuation of authority is analogously applicable for all the other NAAQS, including the PM NAAQS, i.e. TCEQ has the authority to require the permitting of the PM₁₀ and PM_{2.5} NAAQS based upon the 1992 SIP-approved authority to permit the PM NAAQS. The TCEQ, however, must undergo an additional rulemaking and submit for approval as part of the PSD SIP, revisions that address any PSD SIP regulations promulgated by EPA that add new permitting components to the PSD program, e.g., precursors, increments, and significant emission rates (SERs). Thereafter, TCEQ does not need to conduct further rulemaking to cover any new PSD SIP regulations for that pollutant unless EPA promulgates a new requirement not originally contemplated by EPA regulations which TCEQ has undergone rulemaking to address, e.g., a new precursor for PM_{2.5}. By contrast, TCEQ would not necessarily have to undergo additional rulemaking if EPA revises an existing permitting component that TCEQ has previously undergone rulemaking to address, e.g. EPA

revises the SERs for the PM_{2.5} NAAQS and NO_x and SO₂ precursors.

Accordingly, the TCEQ adopted revisions on April 20, 2011, and submitted them to EPA on May 19, 2011, for approval into the Texas SIP. These TCEQ revisions address the regulatory requirements of EPA's implementation rules for the 1997 and 2006 PM_{2.5} NAAQS as applicable to the State's general regulatory program and its PSD and Minor NSR SIP permitting programs. Specifically, EPA promulgated two rules establishing both required and optional implementation regulations for PM_{2.5}: the May 16, 2008 final rule for Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5}) (referred to as the NSR PM_{2.5} Implementation Rule), 73 FR 28321, and the October 20, 2010 final rule for Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers (PM_{2.5}) – Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC) (referred to as the PM_{2.5} PSD Increments – SILs – SMC Rule), 75 FR 64864. Today's proposed action and the accompanying Technical Support Document (TSD) present our rationale for proposing approval of this submission as part of the Texas PSD SIP by finding that the Texas PSD SIP includes the requirements to address these two rulemakings concerning the PM_{2.5} NAAQS.¹

II. Summary of State Submittal

The May 19, 2011, SIP submittal included revisions to two portions of the Texas SIP – the General Definitions at 30 TAC Section 101.1 and the Requirements for Permitting by Rule at 30 TAC Section 106.4. The State's rulemaking also updated the PSD NSR SIP to reflect the

¹ There are no PM_{2.5} nonattainment areas in Texas; therefore TCEQ is not required to adopt or submit a NNSR program for PM_{2.5} implementation as part of the Texas SIP.

PM_{2.5} PSD regulations adopted as of December 9, 2013.² In particular, the State's record demonstrates the intent of the TCEQ for the Texas PSD SIP rules to regulate upon the state's final rulemaking action SO₂ and NO_x as precursors, to account for condensable PM_{2.5} emissions in permitting actions, and to include PM_{2.5} increment provisions, as required by the 2008 and 2010 PM_{2.5} NSR rules.³

A. Summary of the Revisions to the General Definitions at 30 TAC Section 101.1

The General Air Quality Definitions found in 30 TAC Section 101.1 are applicable to the entirety of the Texas Air Quality program. The TCEQ adopted and submitted the following revisions to the General Definitions:

- The definition of “de minimis impact” at 30 TAC Section 101.1(25) was amended to cross reference the significant impact levels promulgated by EPA at 40 CFR 51.165(b)(2).
- The definition of “particulate matter” at 30 TAC Section 101.1(75) was amended to include new sub-definitions for PM₁₀ and PM_{2.5}.
- The definition of “particulate matter emissions” at 30 TAC Section 101.1(76) was

² As discussed in Section I, and more fully explained in Section III, the 1992 SIP approval of the Texas PSD program provides the state the authority to regulate PM_{2.5} emissions via the Texas PSD program. However, the Texas PSD program must be revised when EPA promulgates new PSD SIP permitting requirements such as SERs or increments. Once TCEQ undergoes rulemaking to address these new requirements, the Texas PSD SIP program is then updated to reflect subsequent federal PSD SIP permitting requirements if those requirements revise an existing permitting component that TCEQ has previously undergone rulemaking to address. For example, if EPA changes a SER in the future for direct PM_{2.5} emissions or the PM_{2.5} precursors SO₂ or NO_x, the Texas program would update to reflect the revised SER without need of a further SIP revision by the state. Accordingly, by undergoing the revisions in the May 19, 2011 SIP submission to address the federal PM_{2.5} SIL and SMC permitting components, the existing Texas PSD permitting SIP is updated to reflect EPA's rulemaking removing the PM_{2.5} SIL and SMC on December 9, 2013.

³ This record was submitted to EPA as part of the May 19, 2011 SIP submission, and is included in the docket for this rulemaking.

amended to include new sub-definitions for direct PM emissions and secondary PM emissions.

- The definition of “PM₁₀” at 30 TAC Section 101.1(78) was deleted and moved to the revised definition of “particulate matter” at 30 TAC Section 101.1(75). Then a new definition of “PM_{2.5} emissions” was added at 30 TAC Section 101.1(78).
- The State rulemaking, including the Texas Register preambles, which describe how the General Definitions and State’s PSD and Minor NSR permitting program are applicable to PM_{2.5} precursors, and account for condensable PM_{2.5} emissions was included in the SIP submittal.

B. Summary of the Revisions to the Requirements for Permitting by Rule at 30 TAC Section 106.4

The May 19, 2011 SIP submittal included revisions to 30 TAC Section 106.4 which is under Chapter 106 – Permits by Rule (PBR).

The TCEQ adopted and submitted the following revisions to 30 TAC Section 106.4 to provide for the permitting of PM_{2.5} emissions through the use of the Minor NSR SIP PBRs.

- Substantive revisions to 30 TAC Section 106.4(a)(1) establishing thresholds for emissions of PM_{2.5} and PM₁₀,
- Non-substantive revisions to 30 TAC Section 106.4(a)(2) to correct grammar and formatting,
- Substantive revisions to 30 TAC Section 106.4(a)(4) establishing thresholds for emissions of PM_{2.5} and PM₁₀, and

- Non-substantive revisions to 30 TAC Section 106.4(c) to correct grammar and formatting.
- The State rulemaking, including the Texas Register preambles, which describe how the General Definitions and State's PSD and Minor NSR permitting program are applicable to PM_{2.5} precursors and condensables was included in the SIP submittal.

III. EPA's Analysis of the May 19, 2011 Texas SIP Submittal

A. Analysis of the May 19, 2011 Revisions to the General Definitions at 30 TAC Section 101.1

Texas adopted and submitted revisions to the definitions of "de minimis impact," "particulate matter," "particulate matter emissions," and "PM_{2.5} emissions" at 30 TAC Sections 101.1(25), (75), (76), and (78) respectively. Following is our analysis for each of these revised definitions.

- "De minimis impact" at 30 TAC Section 101.1(25) – The TCEQ adopted and submitted revisions to the definition of "de minimis impact" at 30 TAC Section 101.1(25) to delete the table of values that explicitly listed SIL values and to add, instead, a cross reference to the table of SIL values established by EPA at 40 CFR 51.165(b)(2). EPA proposes to find that this cross reference to the SILs at 40 CFR 51.165(b)(2), as supplemented by the state's rulemaking record, appropriately adds the PM_{2.5} SILs to the Texas air permitting program and is consistent with the CAA and EPA's regulations.

- “Particulate matter” at 30 TAC Section 101.1(75) – The TCEQ adopted and submitted both non-substantive and substantive revisions to the SIP-approved definition of “Particulate Matter”. The revisions retain the SIP-approved definition for “particulate matter” as an introductory paragraph and add new sub-definitions for PM₁₀ and PM_{2.5} under this provision. The sub-definition of “PM₁₀” adopted at 30 TAC Section 101.1(75)(A) is a non-substantive change because the TCEQ moved the previously SIP-approved definition of “PM₁₀” at 30 TAC Section 101.78 to a new sub-definition of “PM₁₀” at 30 TAC Section 101.1(75)(A). EPA proposes to find this non-substantive revision is consistent with the previously approved SIP and with the federal definitions of “particulate matter” at 40 CFR 51.100(o), “particulate matter emissions” at 40 CFR 51.100(pp), “PM₁₀” at 40 CFR 51.100(qq), and “PM₁₀ emissions” at 40 CFR 51.100(rr). TCEQ made a substantive revision to add a new sub-definition of “PM_{2.5}” to the definition of “particulate matter” under this provision at 30 TAC Section 101.1(75)(B). The new sub-definition of “PM_{2.5}” is consistent with the definitions of “particulate matter” and “particulate matter emissions” at 40 CFR 51.1000 and the requirements for PM_{2.5} at 40 CFR Part 50. EPA proposes to find this definition is approvable consistent with federal requirements.
- “Particulate matter emissions” at 30 TAC Section 101.1(76) – The TCEQ adopted and submitted substantive revisions to the SIP-approved definition for “Particulate matter emissions” at 30 TAC Section 101.1(76). The revisions retain the SIP-approved definition for “particulate matter emissions” as an introductory paragraph and add new sub-definitions for “direct PM emissions” and “secondary PM emissions” at 30 TAC Section 101.1(76)(A) and (B), respectively. The new sub-definition of “direct PM emissions” at 30 TAC Section

101.1(76)(A) is consistent with the federal definition for “direct PM_{2.5} emissions” at 40 CFR 51.1000. The new sub-definition of “secondary PM emissions” at 30 TAC Section 101.1(76)(B) is consistent with the federal definition of “PM_{2.5} precursor” at 40 CFR 51.1000.

- “PM_{2.5} Emissions” at 30 TAC Section 101.1(78) – The TCEQ adopted the deletion of the previously SIP-approved definition of “PM₁₀ emissions” at 30 TAC Section 101.1(78). The SIP-approved definition of “PM₁₀ emissions” has been retained in a non-substantive move to the newly created sub-definition at 30 TAC Section 101.1(75)(B) (see discussion above). The TCEQ adopted and submitted a new definition for “PM_{2.5} Emissions” at 30 TAC Section 101.1(78). The new definition of “PM_{2.5} emissions” is consistent with federal definitions at 40 CFR 51.100(o) and (p) and 51.1000. EPA proposes to find this definition is approvable consistent with federal requirements.

B. Analysis of the May 19, 2011 Revisions and the Texas PSD Permitting Program

EPA issued PSD and NNSR SIP regulations for the PM 2.5 NAAQS in two recent rules: 1) the NSR PM_{2.5} Implementation Rule promulgated on May 16, 2008, and 2) the PM_{2.5} PSD Increments –SILs – SMC Rule promulgated on October 20, 2010. TCEQ specifically underwent rulemaking as required by state law to ensure the Texas PSD NSR SIP addresses the federal PSD SIP requirements concerning the PM_{2.5} NAAQS as of December 9, 2013, e.g., precursors, condensables, and increment.⁴ Because the TCEQ’s intent in the state’s rule adoption is clear that

⁴ See, e.g., “The specific intent of the proposed rulemaking is . . . for implementation of PM_{2.5} NSR regulations. The preamble to this rulemaking clarifies how precursors and condensable emissions are addressed.” 35 TexReg. 10147, 10147 (November 19, 2010) (preamble to Texas’s proposed rule adoption addressing federal requirements for the implementation of the PM_{2.5} NAAQS NSR Program; finalized 36 TexReg 2841, May 6, 2011) (emphasis added).

the PSD NSR SIP is intended to address the precursors and condensables as per EPA's 2008 and 2010 PM_{2.5} NSR Rules, EPA finds that the existing Texas PSD permitting program is structured and updated to address all PSD rules for the PM_{2.5} NAAQS as of December 9, 2013, when the most recent revisions to the federal PSD program for PM_{2.5} were finalized. As previously noted, further state rulemaking would be needed if EPA promulgated new permitting components not contemplated in any federal rulemaking, e.g., EPA added a new precursor. Following is our evaluation of how the Texas PSD NSR SIP program addresses the NSR implementation requirements for the PM_{2.5} NAAQS.

1. The NSR PM_{2.5} Implementation Rule

a. *What are the requirements of the NSR PM_{2.5} Implementation Rule for state PSD Programs?*

EPA's final NSR PM_{2.5} Implementation Rule required states to submit applicable SIP revisions to EPA no later than May 16, 2011, to address this Rule's PSD and NNSR SIP requirements. With respect to PSD permitting, the SIP revision submittals are required to meet the following PSD SIP requirements to implement the PM_{2.5} NAAQS:

- (1) require PSD permits to address directly emitted PM_{2.5} and precursor pollutants that contribute to the secondary formation of PM_{2.5};
- (2) establish significant emission rates for direct PM_{2.5} and precursor pollutants (including sulfur dioxide (SO₂) and nitrogen oxides (NO_x)); and
- (3) account for gases that condense to form particles (condensables) in PM_{2.5} and PM₁₀ applicability determinations and emission limits in PSD permits.

b. How does the Texas PSD program address the requirements of the NSR PM_{2.5}

Implementation Rule?

The May 19, 2011, Texas SIP submittal includes revisions of the General Definitions in the Texas SIP, as further explained in section III.A of this proposed rulemaking. Additionally, as required by state law, the TCEQ, by its rulemaking, updated the existing PSD NSR SIP to be consistent with the federal PM_{2.5} NAAQS PSD requirements as of December 9, 2013. As explained below, the rulemaking record demonstrates that TCEQ intends for the revised Texas PSD rules to regulate SO₂ and NO_x as precursors of PM_{2.5} and appropriately account for condensable PM_{2.5} emissions. Based on the analysis presented below, in conjunction with the TCEQ's intent as reflected in the rule adoption, EPA is proposing to find that the Texas PSD NSR SIP includes all of the PSD requirements of the 2008 final NSR PM_{2.5} Implementation Rule for the following reasons:

- (1) Regulation of Direct PM_{2.5} and Precursors: The Texas SIP at 30 TAC Section 116.12 contains definitions applicable to NSR, including PSD, and that apply to both emissions from direct PM_{2.5} and SO₂ and NO_x as PM_{2.5} precursors in the Texas PSD program. The application of these definitions with respect to PSD major stationary sources and PSD major modifications will be discussed separately below.

- a. For purposes of PSD permitting, a major source is defined in the Texas SIP at 30 TAC Section 116.12(17) as a source that emits, or has the potential to emit a federally regulated new source review pollutant at levels greater than those identified in 40 CFR 51.166(b)(1). The definition of major source refers to the SIP-approved definition for federally regulated new source review pollutant at 30 TAC Section 116.12(14): "any pollutant for which a national ambient air quality

standard has been promulgated and any constituents or precursors for such pollutants identified by the United States Environmental Protection Agency.” In conjunction with the state law requirement for a rulemaking action and as explained by TCEQ in the Texas Register preamble language, this SIP-approved definition of “federally regulated new source review pollutant” is inclusive of the PM_{2.5} precursors SO₂ and NO_x identified by EPA. This is supported by TCEQ’s explicit explanation in the rule preamble as to which precursors it considers to be “identified” by EPA and for purposes of this definition and for PSD permitting: “If a new major source will emit, or has the potential to emit, a significant amount of a regulated NSR pollutant in an attainment area for that pollutant, the source must apply BACT for each emissions unit that emits the pollutant. In addition, if a physical change or operational change at an existing major source will result in a significant emissions increase and significant net emissions increase of a regulated NSR pollutant, the source must apply BACT to each proposed emissions unit experiencing a net increase in emissions of that pollutant as a result of the physical or operational change in the unit. Under the PM_{2.5} PSD program, these requirements will apply to direct PM_{2.5} emissions; SO₂ emissions; NO_x emissions, unless states demonstrate that NO_x is not a significant contributor to ambient PM_{2.5} concentrations in that area; and to VOC if identified by a state as a precursor in the PM_{2.5} attainment area where the source is located.” (36 TexReg 2842).

EPA therefore proposes to find that as clarified by the TCEQ rule adoption

preamble, the Texas SIP's definition of federally regulated NSR pollutants is inclusive of the PM_{2.5} precursors SO₂ and NO_x. Additionally, per the Texas PSD NSR SIP, when determining applicability of the definition of major source for purposes of the PSD program, direct emissions of PM_{2.5} and emissions of SO₂ and NO_x as PM_{2.5} precursors must be taken into account.

- b. The Texas SIP defines a major modification at 30 TAC Section 116.12(18) as “any physical change in, or change in the method of operation of a major stationary source that causes a significant project emissions increase and a significant net emissions increase for any federally regulated new source review pollutant.” Like the definition of major source, the definition of major modification also relies on Texas's definition of “federally regulated new source review pollutant” which, as explained in the previous subsection of this proposed rule (III.B.1.b(1)(a)), the Texas SIP definition of federally regulated new source review pollutant, as clarified by TCEQ's rule preamble, identifies SO₂ and NO_x as PM_{2.5} precursors. The definition of major modification goes on to define what constitutes “significant project emissions” by incorporating by reference the federal significant emission rates at 40 CFR 51.166(b)(23). The significance thresholds at 40 CFR 51.166(b)(23) include emission rates for direct PM_{2.5} and SO₂ and NO_x as PM_{2.5} precursors. It is therefore further clear that emissions of SO₂ and NO_x as PM_{2.5} precursors are applicable to the determination of whether

a source is a major modification.⁵ The Texas SIP therefore requires evaluation of direct PM_{2.5} and SO₂ and NO_x as PM_{2.5} precursors as required by EPA's NSR PM_{2.5} Implementation rule when determining the applicability of the definition of major modification. Therefore, EPA proposes to find the TCEQ SIP's definition of major modification is inclusive of SO₂ and NO_x as PM_{2.5} precursors.

- (2) Establish SERs: The SIP-approved Texas PSD program at 30 TAC Section 116.160(a) requires new major sources and major modifications to comply with the Texas PSD permitting requirements at 30 TAC Sections 116.160(c)(1) – (4). As discussed in the analysis above at III.B.1.b(1) and (2), major sources and major modifications are defined by exceedances of certain levels of emissions, or potential emissions, of federally regulated new source review pollutants. This includes direct emissions of PM_{2.5} and emissions of SO₂ and NO_x as PSD precursors of PM_{2.5}. EPA proposes to find the Texas PSD program now requires the PSD permitting of the identified PM_{2.5} PSD precursors SO₂ and NO_x for new major stationary sources and major modifications consistent with the requirements of the 2008 rule, based upon the existing PSD NSR SIP rules at 30 TAC Sections 116.12 and 116.160 – 116.163, and the state's rulemaking record.
- (3) Condensable PM₁₀/PM_{2.5} Emissions: As previously mentioned, the May 19, 2011 SIP submission added a new definition of "PM_{2.5} emissions" in the General Definitions section at 30 TAC Section 101.1(78). This new definition defines such emissions, in part, as "finely-divided solid or liquid material with an aerodynamic diameter less than or

⁵ EPA notes that the Texas PSD SIP definition of major modification references the significant emission rates for direct PM_{2.5} and its precursors (SO₂ and NO_x) as established at 40 CFR 52.21(b)(23), and the Texas SIP does not currently regulate VOCs as precursors of PM_{2.5} for PSD permitting. In order for the Texas SIP to require PSD permitting for VOCs as PM_{2.5} precursors, the TCEQ would need to adopt and submit a separate SIP revision providing the State's demonstration that emissions of VOCs from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations. See 73 FR 28321, at 28333.

equal to a nominal 2.5 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in 40 Code of Federal Regulations Part 51.” The applicable reference method in part 51 that applies to the measurement of condensable $PM_{2.5}$ emissions is Method 202. The definition of “ $PM_{2.5}$ emissions” as adopted in 30 TAC Section 101.1(78) therefore requires the accounting of condensable $PM_{2.5}$ emissions as required by the NSR $PM_{2.5}$ Implementation Rule by the definition’s requirement to use the applicable reference methods in 40 CFR Part 51 that measure such emissions. Analogously, the Texas SIP defines “ PM_{10} emissions” in the General Definitions section at 30 TAC Section 101.1(79). This definition defines such emissions, in part, as “finely-divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in 40 Code of Federal Regulations Part 51.” The applicable reference method in part 51 that applies to the measurement of condensable PM_{10} emissions is also Method 202. The definition of “ PM_{10} emissions” as adopted in 30 TAC Section 101.1(79) therefore requires the accounting of condensable PM_{10} emissions as required by the NSR $PM_{2.5}$ Implementation Rule by the definition’s requirement to use the applicable reference methods in 40 CFR Part 51 that measure such emissions. As noted by TCEQ in the preamble of the State’s rule: “EPA assessed the capabilities of test methods available for measuring condensable emissions, publishing a final rule for methods of measuring filterable PM_{10} and $PM_{2.5}$ and measuring condensable PM emissions on December 21, 2010. The final rule promulgates amendments to Methods 201A and 202. The final amendments to Method 201A add a particulate-sizing

device to allow for sampling of particulate matter with mean aerodynamic diameters less than or equal to $PM_{2.5}$. The final amendments to Method 202 revise the sample collection and recovery procedures of the method to reduce the formation of reaction artifacts that could lead to inaccurate measurements of condensable particulate matter. Additionally, the final amendments to Method 202 eliminate most of the hardware and analytical options in the existing method, thereby increasing the precision of the method and improving the consistency in the measurements obtained between source tests performed under different regulatory authorities. This final rule became effective on January 1, 2011.” See 36 TexReg 2842.

EPA proposes to find that the Texas Register cited above indicates that federal reference Methods 201A and 202, in 40 CFR Part 51, Appendix M will be used by TCEQ in the determination of particulate matter emissions from stationary sources, including condensable particulate emissions. Such condensable emissions as measured by Method 202 would therefore be considered as PM_{10} or $PM_{2.5}$ emissions as appropriate under the terms of the Texas SIP. As the definitions in 30 TAC Section 101.1 establish the meaning and applicability of terms used within the entirety of the Texas SIP, EPA proposes to find this definition of $PM_{2.5}$ emissions, which includes regulation of condensables and as supported by the Texas rulemaking record, is applicable to the Texas PSD NSR SIP. Furthermore, the Texas SIP at 30 TAC Section 116.12(14) defines a federally regulated new source review pollutant to include “any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the United State Environmental Protection Agency”. Because of the state’s rulemaking record, this definition is sufficient to encompass PSD permitting

for condensables in PM_{2.5} and PM₁₀ emission limits as a constituent of PM_{2.5}. EPA therefore proposes to find the Texas PSD NSR SIP now adequately accounts for regulation of condensable PM₁₀ and PM_{2.5} emissions in both applicability determinations and emission limitations as required by the 2008 PM_{2.5} NSR rule.

c. Litigation on the May 16, 2008 PM_{2.5} NSR Implementation Rule

On January 4, 2013, the U.S. Court of Appeals, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir.), issued a judgment that remanded the EPA's 2007 and 2008 rules implementing the 1997 PM_{2.5} NAAQS. The court ordered the EPA to "repromulgate these rules pursuant to Subpart 4 consistent with this opinion." *Id.* at 437. Subpart 4 of Part D, Title 1 of the CAA establishes additional provisions for particulate matter nonattainment areas.

The 2008 PM_{2.5} NSR Implementation Rule addressed by the court decision described above, promulgated NSR requirements for implementation of PM_{2.5} in both nonattainment areas (NNSR) and attainment/unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 rule that address requirements for PM_{2.5} in attainment and unclassifiable areas to be affected by the court's opinion. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 NSR PM_{2.5} Rule in order to comply with the court's decision. Accordingly, the EPA's proposed approval of Texas's SIP revisions with respect to the PSD requirements promulgated by the 2008 NSR PM_{2.5} Rule does not conflict with the court's opinion.

The Court's decision with respect to the NNSR requirements promulgated by the 2008 NSR PM_{2.5} Rule also does not affect the EPA's action on the present proposed approval, as this proposed approval does not address any of the PM_{2.5} nonattainment NSR requirements.

2. The PM_{2.5} PSD Increment – SILs – SMC Rule

a. *What are the requirements of the PM_{2.5} PSD Increment – SILs – SMC Rule for PSD SIP Programs?*

EPA finalized the PM_{2.5} PSD Increment – SILs – SMC Rule to provide additional regulatory requirements under the PSD SIP program regarding the implementation of the PM_{2.5} NAAQS. *See* 75 FR 64864. The PM_{2.5} PSD Increment – SILs – SMC Rule required states to submit SIP revisions to EPA by July 20, 2012, adopting provisions equivalent to or at least as stringent as the PSD increments and associated implementing regulations. Specifically, the SIP rule requires a state's submitted PSD SIP revision to adopt and submit for EPA approval the PM_{2.5} increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS. States were also required to adopt and submit for EPA approval revisions to the definitions for “major source baseline date,” “minor source baseline date,” and “baseline area” – as part of the implementing regulations for the PM_{2.5} increment. States could also discretionarily choose to adopt and submit for EPA approval SILs used as a screening tool to evaluate the impact a proposed new major source or major modification may have on the NAAQS or PSD increment, and a SMC (also a screening tool) to determine the subsequent level of data gathering required for a PSD permit application for emissions of PM_{2.5}. More detail on the PM_{2.5} PSD Increment – SILs – SMC Rule can be found in EPA's October 20, 2010 final rule. *See* 75 FR 64864.

b. *How does the May 19, 2011 Texas SIP submittal satisfy the Required Increment Component of the PM_{2.5} Increment – SILs – SMC Rule?*

With respect to the required increment component of the PM_{2.5} Increment – SILs – SMC Rule, as required by state law, the TCEQ adopted the required rules on April 20, 2011, and submitted the SIP revision to implement those rules on May 19, 2011. As the record reflects, this rulemaking was intended to address, in part, the federal regulations promulgated by EPA’s PM_{2.5} Increment – SILs – SMC Rule. By undergoing this rulemaking, the TCEQ effectuated regulation of the required PM_{2.5} increment component of Texas PSD permitting program on April 20, 2011 when adopting the May 19, 2011 SIP submission. The Texas PSD NSR SIP requirements at 30 TAC Sections 116.160(c)(1)-(4) must be met by proposed sources meeting the definitions of major source or major modification at 30 TAC Sections 116.12(17) and 116.12(18), respectively. The Texas PSD NSR SIP at 30 TAC Section 116.160(c)(2)(A) currently incorporates the federal requirements for PSD increments and the associated implementing requirements found at 40 CFR 52.21(b)(14), (b)(15) and (c). Once the TCEQ underwent rulemaking intended to address the EPA’s 2010 PM_{2.5} PSD SIP regulations, the existing Texas SIP rule at 30 TAC Section 116.160(c)(2)(A), which incorporates the federal requirements for PSD increments found at 40 CFR 52.21(c) and the implementing regulations defining the terms “major source baseline date” and “minor source baseline date” at 40 CFR 52.21(b)(14) and the definition for “baseline area” at 40 CFR 52.21(b)(15), was then by state law inclusive of the PM_{2.5} PSD increment and the implementing regulations in the federal PSD regulations. EPA is therefore proposing to find that the Texas PSD NSR SIP now includes the PM_{2.5} increments and associated implementing regulations, and these increments and implementing regulations are applicable requirements for sources and modifications that are major for PM_{2.5} and/or the identified precursors of SO₂ and NO_x. EPA proposes to find that no further revisions to the Texas PSD NSR SIP are necessary to implement the federal PM_{2.5} increment requirements in Texas.

c. *How does the May 19, 2011 Texas SIP submittal address the Optional SILs and SMC Components of the PM_{2.5} Increment – SILs – SMC Rule?*

As a preliminary note, there has been litigation over the 2010 PM_{2.5} Increment – SILs – SMC Rule which prompted EPA to issue a rulemaking to address the outcome of that litigation as it addressed the optional SILs and SMC components of the Rule. On January 22, 2013, the U.S. Court of Appeals granted a request from the EPA to vacate and remand to the EPA portions of the federal PSD regulations (40 CFR 51.166(k)(2) and 52.21(k)(2)) establishing the SILs for PM_{2.5} so that the EPA could reconcile the inconsistency between the regulatory text and certain statements in the preamble to the 2010 final rule. *Sierra Club v. EPA*, 705 F.3d 458, 463-64 (D.C. Cir. 2013). The court declined to vacate the different portion of the federal PSD regulations (40 CFR 51.165(b)(2)) establishing SILs for PM_{2.5} that did not contain the same inconsistency in the regulatory text. *Id.* at 465-66. The court further vacated the portions of the PSD regulations (40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c)) establishing a PM_{2.5} SMC, finding that the EPA lacked legal authority to adopt and use the PM_{2.5} SMC to exempt permit applicants from the statutory requirement to compile and submit ambient monitoring data. *Id.* at 468-69. On December 9, 2013, EPA issued a good cause final rule formally removing the affected SILs and SMC provisions from the CFR. See 78 FR 73698.

With respect to the optional SILs component of the PM_{2.5} Increment – SILs – SMC Rule, the May 19, 2011 SIP submittal included a revised definition of “de minimis impact” at 30 TAC Section 101.1(25) to incorporate by reference the SILs table at 40 CFR 51.165(b)(2), including the SILs for PM_{2.5}. The Texas PSD NSR SIP program at 30 TAC Section 116.161 identifies the required demonstrations for PSD applicability and the SIP-approved PSD program’s interaction with the 30 TAC Section 101.1(25) “de minimis impact” revised definition: “The commission

may not issue a permit to any new major stationary source or major modification located in an area designated as attainment or unclassifiable, for any NAAQS if ambient air impacts from the proposed source would cause or contribute to a violation of any NAAQS. In order to obtain a permit, the source must reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to eliminate the predicted exceedances of the NAAQS. *A major source or major modification will be considered to cause or contribute to a violation of a NAAQS when the emissions from such source or modification, would at a minimum, exceed the de minimis impact levels specified in § 101.1 of this title (relating to Definitions) at any locality that is designated as nonattainment or is predicted to be nonattainment for the applicable standard.*” (Emphasis added.) This definition is analogous to the regulatory text in the federal regulations at 40 CFR 51.165(b)(2).

The principle laid out in this provision is that a new or modified source may not obtain a permit if it will cause or contribute to the violation of a NAAQS. Such source must reduce the impact of its emissions in order to obtain a permit. Per the definition of “de minimis impact,” a source is considered to cause or contribute to nonattainment air quality, “at a minimum” when the impact exceeds the de minimis impact levels. Thus, the language of the provision does not constrain TCEQ’s discretion to determine that a source causes or contributes to a violation of the NAAQS even when the impact is below the de minimis impact levels.

EPA is proposing to find the SIP rule at 30 TAC Section 116.161 and its cross-reference to the revised definition of “de minimis impact” to be consistent with EPA’s interpretation of the SILs established at 40 CFR 51.165(b)(2). The court in *Sierra Club* acknowledged that the regulatory language at 40 CFR 51.165(b)(2) does not restrict a permitting authority’s discretion to require a more comprehensive showing that the source does not cause or contribute to a

NAAQS violation even where the impact is below the SIL. , 705 F.3d at 465. By extension, EPA finds that the revised definition of “de minimis impact” at 30 TAC Section 101.1(25), as submitted for approval into the Texas SIP, would also not restrict the TCEQ’s discretion to require a more comprehensive analysis as described above. Therefore, EPA proposes to find the May 19, 2011 submitted revisions to the definition of “de minimis impact” at 30 TAC Section 101.1(25) are approvable.

Furthermore, with respect to both the optional SILs and SMC components of the PM_{2.5} Increment – SILs – SMC Rule, as previously discussed the court in *Sierra Club v. EPA* vacated certain portions of the federal PSD regulations addressing PM_{2.5} SILs and SMC. On December 9, 2013, EPA issued a good cause final rule removing the affected provisions from the CFR. *See* 78 FR 73698. As explained throughout this notice, the TCEQ effectuated regulation of emissions of PM_{2.5} through the Texas PSD NSR SIP in the May 19, 2011 SIP submission, thereby updating the existing Texas SIP to be consistent with the federal PM_{2.5} PSD requirements in the PM_{2.5} NSR Implementation Rule and the PM_{2.5} Increment – SILs – SMC Rule. The existing Texas PSD SIP at 30 TAC Section 116.160(c)(2)(A) incorporates the federal provisions 40 CFR 52.21(i)(5)(i)(c) and 52.21(k)(2). Because the TCEQ’s rulemaking updated the PSD NSR SIP to incorporate the permitting components of the PM_{2.5} Increment – SILs – SMC Rule, the existing Texas PSD permitting program is also intended to be consistent with and incorporate any future revised federal regulations in support of the rule. As a result of EPA’s good cause final rulemaking discussed above, the federal requirements for PM_{2.5} PSD regulation no longer include the PM_{2.5} SMC and SIL provisions at 40 CFR 52.21(i)(5)(i)(c) and 52.21(k)(2), respectively, that were promulgated in the PM_{2.5} Increment – SILs – SMC Rule. The existing Texas PSD permitting program as structured in turn no longer includes these same PM_{2.5} SMC

and SIL provisions.

Therefore, EPA proposes to find the SIP-approved Texas PSD program is consistent with the federal requirements because the Texas program no longer includes the PM_{2.5} SMC and SIL provisions contained at 40 CFR 52.21(i)(5)(i)(c) and 52.21(k)(2).

C. Analysis of the May 19, 2011 Revisions to the Texas Minor NSR Permitting Programs

The promulgation of the 1997 and 2006 PM_{2.5} NAAQS established the basic requirement to protect human health and public welfare from emissions of PM_{2.5}. As discussed in section II.B. of today's rulemaking, EPA promulgated specific revisions to major source permitting programs to implement the new NAAQS requirements through the 2008 NSR PM_{2.5} Implementation Rule and 2010 PM_{2.5} Increment – SILs – SMC Rule. EPA has not promulgated separate revisions to the Minor NSR requirements to implement the PM_{2.5} NAAQS, however, section 110(a)(2)(C) and EPA's regulations at 40 CFR 51.160-164 require that a State's Minor NSR program address all promulgated NAAQS. As of the effective date of the 1997 and 2006 PM_{2.5} NAAQS, the TCEQ's Minor NSR SIP required a preconstruction permit for any new construction or modification of these emissions.

The Texas Minor NSR Permitting Program includes several options for minor permit authorizations – including case-by case minor permits and amendments, permit alterations, standard permits, and permits by rule. The TCEQ did not need to make any revisions to the SIP-approved Minor NSR permitting program at 30 TAC Chapter 116 to meet federal requirements for the PM_{2.5} NAAQS. In its May 19, 2011 SIP submission, however, the TCEQ submitted revisions to its PBR SIP rules.

The Texas PBR program is a SIP-approved Minor NSR permitting option at 30 TAC Chapter 106. EPA approved Texas's regulations for PBR on November 14, 2003 (68 FR 64543). As described in further detail in that *Federal Register* notice, a PBR is a Minor NSR permit which is adopted under 30 TAC Chapter 106 (see 68 FR 64543, at 68454-68455). The Texas PBR Minor NSR program provides an alternative process for approving the construction of certain new and modified facilities or changes within facilities which TCEQ has determined will not make a significant contribution of air contaminants to the atmosphere. These rules provide a streamlined mechanism for approving the construction of certain facilities which would otherwise be required to apply for and receive a case-by-case Minor NSR permit before commencing construction or modification. Under the Texas SIP a PBR is limited by parameters to ensure its appropriate use as a Minor NSR permit in compliance with the Minor NSR requirements of the Texas SIP and 40 CFR part 51.

The revisions submitted May 19, 2011, lower existing SIP thresholds for PM₁₀ and PM_{2.5} to match them with EPA's significant emission rates, therefore making the SIP more stringent and also ensuring that a PBR for emissions of these pollutants will not cause or contribute to a violation of the two NAAQS and meet the Minor NSR SIP requirements. This is supported by the following:

- (1) The maximum emission level authorized for PM₁₀ is established at 15 tpy which is the same as the significant emission rate (SER) for that pollutant in Major NSR under 40 CFR 51.165(a)(1)(x)(A) and 51.166(b)(23)(i). As discussed at 70 FR 65984, at 65098 (November 1, 2005), EPA set the PM₁₀ SER at 15 tpy because the ambient impact of PM₁₀ at this level is about 4 percent of the 24-hour PM₁₀

NAAQS. This is less than the current SIP level for inhalable particulate matter (PM₁₀) at 25 tpy.⁶

- (2) In the existing SIP, the maximum emission level authorized for PM_{2.5} is 25 tpy.⁷ The revised maximum emission level authorized for PM_{2.5} through the May 19, 2011 SIP submission is established at 10 tpy which is the same as the SER for that pollutant in Major NSR under 40 CFR 51.165(a)(1)(x)(A) and 51.166(b)(23)(i). As discussed at 70 FR 65984, at 65098 (November 1, 2005), EPA set the PM_{2.5} SER at 10 tpy at which its ambient impact is about 4 percent of the annual PM_{2.5} NAAQS.⁸
- (3) EPA established the significant emission rates for PM₁₀ and PM_{2.5} at 40 CFR 51.165(a)(1)(x)(A) and 51.166(b)(23)(i) as the basis for determining applicability under the Major NSR Programs, based upon modeled impacts which demonstrate that emissions at or below the significant level is less than 4 percent of the applicable NAAQS. This level of impact would also apply to emissions from any source, including changes at both major and minor sources. As it applies to Minor NSR (which includes the Texas PBR Program), any emissions of PM₁₀ and PM_{2.5}

⁶ The current SIP provides a threshold for inhalable particulate matter (PM₁₀) at 25 tpy. In this revision, the indicator for inhalable particulate matter was changed from PM₁₀ to PM. The threshold for PM is 25 tpy, which is identical to the significant emission rate for particulate matter (PM) (or "Total Suspended Particulates" (TSP)) at 40 CFR 51.165(a)(1)(x)(A) and 51.166(b)(23)(i). As documented at 45 FR 52676, at 52707 (August 7, 1980), the significant emission rate of PM was established at a level that is no greater than 4 percent of the 24-hour primary standard for PM.

⁷ The current SIP does not provide an explicit threshold for PM_{2.5}, but provides a catch all threshold of 25 tpy for pollutants not specifically listed in 30 TAC 106.4(a)(1).

⁸ The PM_{2.5} significant level was based upon annual average because the annual average is the controlling standard for the PM_{2.5} NAAQS. 70 FR 65984, at 65098.

that are equal to or less than 15 and 10 tpy, respectively, are anticipated to have an air quality impact that is less than 4 percent of the NAAQS.

- (4) Accordingly, we would expect that the emissions of PM_{10} and $PM_{2.5}$ below maximum emission levels established in the Texas PBR Program will only result in small impacts on the ambient air quality (less than 4 percent of the NAAQS for PM_{10} and $PM_{2.5}$) and would not cause or contribute to violations of the NAAQS.

In sum, the $PM_{2.5}$ thresholds adopted for the PBR program are both more stringent than the existing SIP's thresholds, and are equivalent to the federal SERs, which are rates of emissions EPA found to be less than significant. EPA therefore finds adoption of these thresholds for $PM_{2.5}$ in the Minor NSR PBR program to analogously be less than significant, and not violate the federal Minor NSR requirements. Furthermore, there is no data demonstrating that emissions below these thresholds will not meet the federal Minor NSR requirements.

Additionally, there are currently no areas in the state of Texas designated nonattainment for either the 1997 or 2006 $PM_{2.5}$ NAAQS. EPA therefore proposes to find that, as discussed above, the submitted PBR thresholds for PM_{10} and $PM_{2.5}$ will not interfere with attainment and maintenance of a NAAQS for these pollutants, will not violate applicable requirements of the control strategy, will not interfere with reasonable further progress, and will not interfere with any applicable requirement of the Act. Accordingly, the submitted PBR thresholds for PM_{10} and $PM_{2.5}$ meet the requirements of the Act at 110(a)(2)(A) and (C) and 110(l) and also meet the requirements of 40 CFR 51.160(a). Therefore, EPA is proposing to find that the Texas Minor NSR SIP for PBRs, as revised, meets the permitting requirements for the 1997 and 2006 $PM_{2.5}$ NAAQS.

IV. Proposed Action

EPA proposes to approve the revisions to the Texas SIP at 30 TAC Sections 101.1 and 106.4 submitted on May 19, 2011 for the implementation of the 1997 and 2006 PM_{2.5} NAAQS. EPA has made the preliminary determination that the May 19, 2011 revisions to 30 TAC Sections 101.1 and 106.4 are approvable because they are adopted and submitted in accordance with the CAA and EPA regulations regarding implementation of the PM_{2.5} NAAQS. Therefore, under section 110 and part C of the Act and for the reasons stated above, EPA proposes to approve the following revisions to the Texas SIP:

- Substantive revisions to the definition of “de minimis impact” at 30 TAC Section 101.1(25),
- Substantive revisions to the definition of “particulate matter” at 30 TAC Section 101.1(75),
- Substantive revisions to the definition of “particulate matter emissions” at 30 TAC Section 101.1(76),
- Substantive revisions to the definition of “PM_{2.5} emissions” at 30 TAC Section 101.1(78),
- Substantive revisions to the requirements for permits by rule at 30 TAC Sections 106.4(a)(1) and, (a)(4), and
- Non-substantive revisions to the requirements for permits by rule at 30 TAC Sections 106.4(a)(2) and (c) to correct for formatting and grammar.

EPA is also proposing to find that the Texas PSD NSR SIP meets the PM_{2.5} PSD requirements contained in the federal regulations as of December 9, 2013, including regulation

of NO_x and SO₂ as PM_{2.5} PSD precursors, regulation of condensables, and PM_{2.5} increments.

V. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen Oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 3, 2014

Ron Curry,

Regional Administrator, Region 6.

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